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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 AVIATION INSURANCE SERVICES
11 OF NEVADA, INC., *et al.*,

12 Plaintiffs,

13 v.

14 LESLIE DEWALD, *et al.*,

15 Defendants.
16

Case No. 2:10-cv-01536-LDG (LRL)

ORDER

17 Plaintiffs Aviation Insurance Services of Nevada, Inc., Aviation Insurance Holdings,
18 Inc., Ronald A. Hill, and Teresa K. Heckart move to seal this entire case (## 5, 17).
19 Defendants Leslie DeWald and Ascend Insurance Resources, Inc. oppose the motion
20 (#19).

21 The parties agree that there is a well-established common law right “to inspect and
22 copy public records and documents, including judicial records and documents.” *Nixon v.*
23 *Warner Communications*, 435 U.S. 589, 597 (1978). Nevertheless, courts have authority to
24 exercise their discretion to seal documents and to set limits upon access to records and
25 files. “[A]ccess to judicial records is not absolute. A narrow range of documents is not
26 subject to the right of public access at all because the records have ‘traditionally been kept

1 secret for important policy reasons.” *Kamakana v. City and County of Honolulu*, 447 F.3d
 2 1172, 1178 (9th Cir. 2006) (*quoting Times Mirror Co. v. United States*, 873 F.2d 1210, 1219
 3 (9th Cir.1989)). As summarized by the Ninth Circuit in *Kamakana*:

4 Unless a particular court record is one “traditionally kept secret,” a “strong
 5 presumption in favor of access” is the starting point. A party seeking to seal a
 6 judicial record then bears the burden of overcoming this strong presumption
 7 by meeting the “compelling reasons” standard. That is, the party must
 8 articulate compelling reasons supported by specific factual findings, that
 9 outweigh the general history of access and the public policies favoring
 disclosure, such as the public interest in understanding the judicial process.
 In turn, the court must conscientiously balance the competing interests of the
 public and the party who seeks to keep certain judicial records secret.

447 F.3d at 1178-79 (internal quotations and citations omitted).

10 The specific facts proffered by the plaintiffs in support of their motion (and which this
 11 Court specifically finds) are that (a) the parties were involved in prior litigation, (b) the
 12 parties entered into a Confidentiality Agreement in that prior litigation, which agreement
 13 was entered as an Order by the Court, (c) the parties settled that prior litigation, and their
 14 Settlement Agreement reaffirmed the Confidentiality Agreement, and (d) pursuant to the
 15 stipulation of the parties, the Court sealed the entire prior litigation subsequent to its
 16 settlement.

17 The plaintiffs argue that the subject of the prior dispute and the present dispute
 18 involve the operation, control, ownership, and financial condition of insurance brokerages,
 19 that the business of aviation insurance is highly competitive, and the potential for damage
 20 to the parties in airing their dispute in public is great, while the legitimate interest of the
 21 public is very limited. To the extent these arguments are intended as allegations of fact,
 22 they are unsupported. Thus, the Court cannot enter any specific finding of fact as to these
 23 arguments. To the extent that these arguments are intended as compelling reasons for
 24 sealing this matter, the plaintiffs have not proffered facts to support these reasons.

25 The parties did enter into a Confidentiality Agreement in the prior litigation. While
 26 that agreement covered “Confidential discovery materials and information produced in

1 [that] litigation, of any kind or nature whatsoever,” the agreement specifically defined
2 “Confidential Information” to mean “any discovery materials produced in this Litigation after
3 the date of the parties’ execution of this Stipulation and Order that are designated and
4 marked by any party as ‘Confidential Information.’” The agreement further provided that, for
5 a party to make such a designation, “the designating party must have a reasonable, good
6 faith belief that the discovery materials so designated fall within Federal Rule of Civil
7 Procedure 26(c)(7).” The Confidentiality Agreement did not render all information or
8 discovery confidential, but only that information or discovery as to which the designating
9 party had a reasonable, good faith belief that the materials fell within then-Rule 26(c)(7).
10 Such an agreement does not preclude disclosure of a dispute merely because *the airing of*
11 *the dispute* in public may potentially damage the business of the parties. Rather, and at
12 most, the Confidentiality Agreement precluded the airing of specific information that would
13 constitute a trade secret or other *confidential* research, development or commercial
14 information.

15 The Court would further note that, as to the interest of the public, the Ninth Circuit’s
16 instruction that a strong presumption favors access of the general public establishes that
17 the legitimate interest of the public is not limited but is strong.

18 Finally, to the extent that the Plaintiffs’ argue that this matter should be sealed
19 because the Court sealed the entire record in the prior litigation, such argument is without
20 merit. The Plaintiffs’ argument has required the Court to re-visit its Order in the prior
21 litigation sealing the record of that litigation. In so doing, the Court notes that the Order
22 was entered pursuant to the agreement of parties set forth in their Settlement Agreement.
23 The Court relied upon the agreement of the parties, and did not make specific factual
24 findings that would support compelling reasons to seal the entire record. Plaintiffs’ current
25 reliance upon that prior Order suggests that the Court re-visit and vacate the prior Order as
26 improvidently entered. The mere agreement of the parties to seal the record was

1 insufficient to support the sealing of the entire record. Accordingly, the Court will order the
2 Plaintiffs and the Defendants to show cause why the entire record of the prior litigation
3 should remain sealed. The Court recognizes that, as the prior litigation is presently sealed,
4 it will be appropriate for the parties to file their responses to this show cause order under
5 seal. Nevertheless, if the Court determines that the prior litigation should not remain
6 sealed, the Court will unseal the responses to this show cause order unless the parties
7 identify specific information in their responses that cannot be disclosed pursuant to the
8 Confidentiality Agreement.

9 The parties were able to litigate the prior matter even though the prior matter was
10 not sealed during the litigation. The parties were able to enter into a Confidentiality
11 Agreement that was sufficient to protect the information and discovery covered by that
12 agreement. In the present matter, if some information merits protection, then the exhibits
13 containing that information can be sealed. If a paper must recite information that should be
14 sealed, a redacted copy of the paper can be filed publicly, and a complete version of the
15 paper can be filed under seal.

16 The Court would note that Plaintiffs have filed numerous documents under seal
17 although an order sealing this case has not been entered, the Court has not entered a
18 protective order governing this matter, and the Plaintiffs have not indicated how the
19 information contained in papers or in exhibits is covered by the Confidentiality Agreement
20 of the prior litigation. In reviewing several of these documents, it is not apparent to the
21 Court that these documents disclose information that is subject to the prior Confidentiality
22 Agreement. Accordingly, the Court will require that Plaintiffs show cause why each of the
23 papers and exhibits they have filed under seal should remain sealed. For each paper or
24 exhibit Plaintiffs contend should remain sealed, Plaintiffs are directed to specifically identify
25 each item of information in the document or exhibit that they contend should be sealed, the
26 compelling reasons to seal that information, and specific facts supporting the compelling

1 reasons to seal the information. The Court recognizes that, in their arguments to show
2 cause, the Plaintiffs may need to specifically explain why information is subject to the prior
3 Confidentiality Agreement and that such an explanation would necessarily disclose that
4 information. Further, the defendants will need to respond to these arguments prior to a
5 determination whether the information should or should not be sealed. As such, at this
6 time the parties shall file their responses to the show cause order under seal.

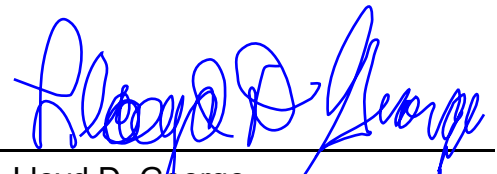
7 Therefore, for good cause shown,

8 THE COURT **ORDERS** that Plaintiffs' Motions to Seal (## 5, 17) are DENIED.

9 THE COURT FURTHER **ORDERS** that, not later than 15 days from the entry of this
10 Order, Plaintiffs and Defendants shall SHOW CAUSE why the entire record in Case No.
11 2:06-cv-1461-LDG (LRL) should remain sealed. The parties are to file their responses to
12 this SHOW CAUSE order under seal.

13 THE COURT FURTHER **ORDERS** that, not later than 15 days from the entry of this
14 Order, Plaintiffs SHOW CAUSE as to each paper and exhibit they have filed under seal in
15 the present litigation as to why the document should remain under seal. Defendants may
16 file a response not later than 7 days after the Plaintiffs file and serve their response. The
17 parties are to file their responses to this SHOW CAUSE order under seal.

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19 DATED this 5 day of April, 2011.

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22 Lloyd D. George
23 United States District Judge
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